Of course there is in the working of the Bill likely to be plenty of scope for corruption and hardship and due protection should be made in the rules, etc., that are to be passed under the Bill. These are matters which should be reserved for consideration at the further stages of the Bill. I accept the principle of the Bill."

Mr. Subrahmanya Pillai:—

"Sir,

I have very great pleasure in supporting the principle of the Bill. The inequality in the incidence of taxation has been repeatedly pointed out to the Government in various sessions of the S. M. P. Assembly and I am glad that they have taken up the question at least now. That the Government were always in want of funds is no secret and their policy hitherto has been to have recourse to some taxation that would fall heavily upon the landholders. Government in their address to the last session of the S. M. P. Assembly have clearly pointed out their future policy and have defined a certain programme of work. That address, I know, gave entire satisfaction to the public and they were well pleased with the programme of work mentioned in it. For my part, I have great misgivings as to how the Government are going to find funds for all that, if they do not want to disappoint the people. Any how I can safely assure the Government that the public will be ready to co-operate with Government in finding funds for a progressive administration, provided the means of collecting such funds do not fall heavily upon the poor and the already overburdened."

Mr. Subba Aiyar's motion was carried.

President:—

"We have next to appoint a Select Committee for considering the provisions of the Bill."

Mr. Raman Tampi:—

"With regard to the appointment of a Select Committee for the consideration of the Bill, I would suggest that since, unlike other Bills, the Bill is dealing with the imposition of tax of a novel kind and since it is going to affect all classes of people, the Committee may be made as large as possible."

President—"I think that this may be done."

Mr. Subba Aiyar next moved that the Bill be referred to a Select Committee consisting of Messrs. Subrahmanya Pillai, Nidiry, Raman Tampi, Adam Sait, George, Ranga-swami Aiyangar and the mover to report within one month.

Seconded by Mr. G. Parameswaran Pillai."

Carried.

THE NAIR REGULATION AMENDMENT BILL.

Mr. Raman Tampi, in introducing a Bill to amend the Nair Regulation, I of 1088, spoke as follows:—

"Sir,

In rising to introduce this Bill scheduled against my name I have to make a few general observations on the provisions contained therein.

The subject of amending this Regulation has been engaging the attention of the Nair Community even before I asked for leave to introduce a Bill in the late Council. With my application for leave, and publication of my first draft Bill, different sections of the community began to give expression to their opinions. It was found that an all-round revision of the Regulation was desired and hence I sought permission to withdraw my original Bill which purported to amend only specific portions of the Regulation.

In preparing my revised Bill which was duly published and is about to be introduced in the Council, I gave my best consideration to all shades of criticisms that appeared in the press and expressed on the platforms and I have sincerly tried to meet reasonable and legitimate criticism. I will, with the permission of the Council, proceed to describe, as shortly as possible, the scheme of the proposed law.

In regard to Chapter I which deals with the definitions, there is no serious disagreement. There seems to be some misconception with regard to the scope of the definition of the word "Nair". In some courts, questions appeared to have been raised whether Vilakathalavans and Veluthedans (barbers and washermen) are Nairs and whether the provisions of the Regulation apply to them. Any one who is conversant with the usages amongst the people of this country can well see that neither the Vilakkathalavan nor the washerman is recognised as a Nair. The Travancore Marumakkathayam Committee's Report, at page 13, paragraph 24, considers this question. Of the 18 classes of sudras referred to in the work called "Keralavakasakramam" and in the State Manual, the Committee was of opinion that only the first fourteen are, by custom, recognised as Nairs. The remaining four, *viz.*, Tarakan, Vilakkathalavan, Veluthedan and Chalian are ruled out. Similarly, in the report of the Cochin Nair Regulation Committee, at page 6,

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paragraph 19, the Committee says:—"The Nair Community does not regard the above-mentioned four low caste Nairs as Nairs in the true sense of the expression and objection is often taken to the use of such appellations as Vilakkathala Nair and Veluthedath Nair, which are somewhat common in British Villages adjoining the Chittoor taluk. Further discussion, it appears to me, is needless and the sentiment of the Nair Community is certainly against the inclusion of these classes as Nairs. Chapter II deals with marriage and its dissolution. With regard to some portions of this chapter, a warm controversy has arisen. One section dislikes the provision made for divorce altogether. They say that a marriage once effected should never be dissolved except by death of either party. Another class is of opinion that this should be the rule and an exception may be made where either of the parties to a union is insane or afflicted with an incurable or contagious disease, or where the woman is barren. Then there is one section that insists upon monogamy being strictly enforced, while others say that the rule should be abated when any of the conditions mentioned above is present. On reading the literature on the subject, and giving my best attention to the same, I have come to the conclusion that the views of the Marumakkathayam Committee embodied in the Regulation regarding divorce should prevail and no change of law on this subject is necessary at present. But in the interest of better morality, monogamy should be insisted upon. Of course, if exceptions are needed in particular cases, provision would be made for the same in the later stages of the Bill.

Thus far I have spoken only of the views of the Nair Community regarding this aspect of the law. Members of other communities who have now marital relationship with Nair females will be affected by the proposed law. Though individuals have expressed disagreement, I have not been convinced that such communities, as a class, object to the proposed change. The *Sudarsanam*, one of the Travancore newspapers, contained some articles opposing the proposed change in the law. These articles seem to object to the application of the law chiefly to Brahmins. The main ground of attack is that Government have no right to interfere with the personal law of the communities concerned. I will pause, for a few moments, to consider this point carefully. To me it appears that it is a little late in the day to come forward with an objection of this kind. A Full Bench of the Travancore High Court has already decided that the children of a Brahmin by a Nair wife have got, during their minority, a right of maintenance against the self-acquisitions of the father (*vide* 20 T. L. R. p. 65). This certainly, is interference, to howsoever small an extent, with the personal law of a Brahmin. It is settled law that if a Hindu becomes a convert to Mahomedanism, his later acquisitions will devolve according to Mahomedan law, in spite of his personal law. It is contended that his acquisitions before conversion would devolve upon those who were entitled to them at that time, by Hindu law. Mayne, the acknowledged leading authority on Hindu law, says as follows regarding this proposition:—"This proposition should be restricted to cases where, by the Hindu law, his heirs had acquired an interest which he could not defeat. If he was able to disinherit any of his relations, by alienation or by will, it is difficult to see why he should not disinherit them *by adopting a law* which *gave him a different line of heirs*". The italics are mine. This view confirms the proposition that in respect of the self-acquisitions of a Hindu there could be heirs other than those under Hindu law which is his personal law. The Bill under discussion proposes to affect only the self-acquisitions of a Hindu father. That a class of heirs different from those contemplated by the personal law of the Hindus can be created by statute is clearly illustrated by the provisions of the Indian Succession Act. A Hindu, no doubt, is not governed by the Act so long as he is a Hindu, but if he becomes a convert to Christianity, the law will apply to him. That this is by conversion is immaterial. Just as a Hindu can, by adopting the Christian faith, change his personal law, and the statute then creates for him a different method of succession, a Brahmin, by his marriage with a Nair female, to that extent, changes his personal law, and a line of succession different from that under Hindu law will be opened. It appears to me that there is another argument against the criticism referred to, which cuts at its very root. If the traditional line of succession amongst the Hindus is their personal law, the line of descent through females alone followed by the Nairs from time immemorial was certainly their personal law. Section 12 of Regulation I of 1088 (which rules that the wife and children are heirs to one-half of the self-acquisitions of a Nair male) certainly amounts to interference with the personal law of the Nairs current till then, and it is, according to the views of these critics, illegal. It may be said that Nairs, waiving their right of protest, submitted to the law. This argument cannot be accepted as sound, because waivers or consent cannot validate something which is illegal. Viewed from any standpoint, the position taken by the critics is indefensible.

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The Nair community feels it an insult that in the case of these marriages (with Brahmins and others) wives and children are not to get any share of the properties of the husband or the father. Natural justice demands the change. There is no doubt that Brahmins and other communities have begun to see things in a different light. In the Cochin Committee's Report, at p. 24, we find that several leading Brahmin gentlemen have agreed that the non-Nair husbands also should be saddled with the same responsibilities as the Nair husbands. My Bill provides that within a specified time non-Nair husbands and wives could apply to be exempted from the operation of this part of the law. As for the future, if non-Nairs do not like to incur these responsibilities, it is open to them not to contract marriages with Nair females. It appears to me, therefore, that the proposed change, while protecting the interests of a large section of the Nairs, redeems the self-respect of the community as a whole. Chapter IV does not call for any remark. Chapter V deals with inheritance and intestate succession. What I have said in connection with the marriage of non-Nairs will apply to inheritance and succession in the case of non-Nair males. Amongst the Nairs there is a growing demand that the whole of a man's self-acquisitions should devolve on his wife and children. It appears to me that this is compatible only with a law allowing individual partition. As my Bill does not go so far, I have kept along the lines of the present Regulation which allows the wife and children to inherit one-half of such acquisitions. The moment individual partition is allowed, this provision will automatically cease to operate under the existing law. When a man dies leaving self-acquisitions, possession of these vests in the anandaravars. As the community is gravitating towards Makkathayam, it is thought more advisable to change this and allow the possession to vest in the wife and children. Under the present law, Makkathayam property is divisible. But doubts have been thrown on this provision by judicial decisions as to whether grandchildren by a deceased child could claim partition of the estate. Explanation to sections 19 is intended to make the law on the point clear.

Chapter VI provides for management of Tarwad. Some seem to think that these provisions will hamper management. I respectfully decline to accept this criticism as sound. Karanavans who are to be entrusted with properties which are common to them and others should not be allowed unlimited powers of management. The interests of the Tarwad require such restrictions. It is universally felt that unlimited power of disposal over movables enjoyed by the karanavan is very often misused. It looks anomalous that while for a sale of a land for ten rupees the law requires the consent of all adults in the tarwad, valuable movables could be parted with by karanavans without being questioned. Sections 33 and 34 provide for allotment of properties in lieu of maintenance for junior members. I believe this will save junior members from the difficulty of either suing frequently or executing maintenance decrees. The present law does not allow this

The provisions of Chapter VII relate to partition in Nair tarwads. The consensus of opinion amongst Nairs is in favour of partition. But with regard to the details of the scheme, there is wide divergence of views. While one party is in favour of thavazhee partition, the advanced wing in the community wants a law allowing individual partition. The scheme of partition formulated by Justice Govinda Pillai's Committee was the thavazhee partition. I shall illustrate this. A, a female, has 2 sons and 3 daughters, the daughters themselves having their own descendants. According to the Committee's Report, partition could be effected after the death of A and her two sons. The properties could be divided between the three daughters, each representing a thavazhee. This would place the right out of reach of most Nair families for a long time; the sons may be younger than the daughters and if any one of them is living, partition is impossible. Hence I have arranged that partition may be effected with the consent of A, the ancestress, during her life-time, and after her death, partition is permissible between her children. The existence of the sons of the common ancestress should not be a bar to partition. The main reason for demanding partitions, is that families become too large and unwieldy to be managed together and the karanavans do not look to the benefits of their anandaravans. My scheme allows the families to be split into smaller bits composed entirely of people who are more closely related to each other than in the tarwad as a whole. This is the scheme followed in the Cochin Regulation also. The next point to be considered is the method of division. I have arranged in my Bill that the properties should be divided *per capita* amongst all the living members, whether they are adults or minors. This is considered by some to be unfair, in that the seventy-year old karanavan and the new born baby get equal shares. I cannot see any unfairness or injustice in this. On the contrary, not to do this would be injustice. The High Court of Travancore has already ruled that the members of a Nair tarwad are co-proprietors of the tarwad properties. If this is so, the only mode of division is by

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equal shares. No doubt, this would deprive the karanavans of a great portion of the properties they were in possession of, to the exclusion of others. The proposed change in the law will only enable rightful claimants to secure what is due to them and karanavans have only to be thankful for having been left undisturbed in their work of plunder for this length of time. The Marumakkathayam Committee proposed a compromise by dividing one-half of the properties *per stirpes* or per thavazhee and the other half *per capita*. With due deference to the members of the Committee, I cannot but reject this proposal. Compromise means an attempt at reconciling conflicting but reasonable view-points. I cannot detect any trace of reason in the opposite proposal. Having sketched my scheme, I will now proceed to say a few words about the demand for individual partition. The educated classes form the progressive party and there is no doubt that the majority—a very large majority—is in favour of individual partition. The percentage of educated classes is much smaller than the illiterate and there is a very strong section against individual partition. The legislation being in respect of social matters, measured progress is desirable. To me it also seems that so long as marriages with people of other castes than Nairs obtain, individual partition will not be to the good of the community as a whole. When these marriages go out of fashion—and I am sure they will—and the prejudices of the conservative section of the community wear out, individual partition will be easy of accomplishment. Even as it is, the Bill makes out a scheme of partition which takes us almost next door to individual partition. While according to the existing law the right to partition rests on the unanimous will of all adult members of a tarwad, the Bill places it subject to the consent of one single individual, the common ancestress of a group of members. The properties are to be divided *per capita*. During the life-time of one's own mother, partition is possible only with her consent. After her death, her children can divide, the males getting their shares straight away and the females getting, in the aggregate, their share and their children's shares. Chances of friction amongst the members are far less than now and the period during which a thavazhee remains undivided will be comparatively short. In my humble opinion, all legitimate aspirations are met by the Bill and some little reservations are made to satisfy the opposition. In case the majority of the members of a Tarwad do not want to change their status, they can avail themselves of the provisions made in the chapter relating to impartible tarwads. If they subsequently change their minds, then also they can work themselves out of the restrictions.

The closing chapter contains certain supplemental provisions. The chief amongst them is the Section which allows non-Nair husbands, within a specified time after the passing of the law, to apply for exemption from the provisions relating to marriage and succession. In the Cochin Regulation, power is given to the husband or wife to make such application. I have proposed that such application should be jointly made by the husband and the wife. A man who was married to a Nair female and has given birth to children by such marriage should not in fairness be allowed to escape from his liabilities scot-free. If his wife is not agreeable to apply for exemption, he is precluded from so applying; but he can claim a divorce and he will only have to pay a compensation which appears to a judicial tribunal to be reasonable.

In the foregoing remarks, I have tried to explain, as clearly as I can, the scope of the Bill. I have to express my thanks to a large number of my friends who have encouraged me and helped me with their valuable suggestion. To my critics, who still maintain that I have not gone as far as they wanted me, I have only to say that honestly I believe that, at present, we need go only as far as the provisions of the Bill will take us and that subsequent development of the law should wait till we gather experience of the present experiment. Some say that the Bill is crude in its fashioning and that improvement is possible. I do not dispute either of these statements and all suggestions to make the enactment better fitting and strong and generally more useful will be gratefully accepted. I have no doubt that the Bill will, in its later stages, receive treatment at the hands of expert draftsmen and all that is now lacking will duly come in. To my colleagues in the Council, who are not of my community, I will say a few words. Our community sincerely feels the defects in the present law and we are trying to go forward and to improve the fabric of our society, and in this attempt I expect their cordial support and sympathy, and I will hope that their attitude in the later stages of the Bill will prove that these hopes of mine were not entertained in vain."

Mr. G. Parameswaran Pillai :—

"Sir,

I do not propose at this stage to comment on the several new sections in the Bill just now introduced by Mr. Raman Tampi, but would content myself with a few observations on the general principles of the Bill.

I would first deal with the vexed question of partition. Mr. Tampi has practically opted the provisions in the Cochin Nair Regulation in regard to this as well as othe-

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matters. The Bill provides for what is ordinarily termed "thavazhee partition" with certain modifications. On the death of the lineal ascendant or with her consent, a male or a female without issue may claim his or her individual share and separate. Each thavazhee will be entitled to so much of the common properties as would fall to the members of that thavazhee if a division *per capita* were made amongst all the members of the tarwad. In declaring this share, the principle of individual partition is adopted, although the tarwad system as such is sought to be maintained by allowing the tarwad to be split up only into thavazhees. The mover of the Bill says he is proceeding cautiously and does not wish to wound the sentiments of the conservative party while at the same time trying to meet the demands of the "advanced wing". This is indeed a very difficult task. Let us now consider how far the mover of the Bill has succeeded in meeting the wishes of the community consistent with its well-being. The learned mover is convinced that individual partition is most desirable as an ideal and he has it as his goal. According to him the majority of the educated section of the community is in favour of individual partition and he says some people rightly or wrongly—he does not pause to consider that point—entertain an idea that progress towards individual partition should be slow. Mr. Tampi has assured us that he does not apprehend any catastrophic change when once individual partition is allowed. In fact, it would appear that but for the sentiment of a certain section of the community he would not have hesitated to provide for individual partition. Beyond this, there is no argument furnished by the learned mover against what he considers the "advanced view". But we cannot dismiss this point here. There are objections raised in certain quarters against partition of any kind although this party constitutes but a very small minority. Others there are who favour thavazhee partition but not individual partition. I need not dwell at length on the desirability of partition since I understand that the principle of partition has been accepted by a very large majority in the community. The only question relates to the further detail whether partition should be by thavazhees or individuals. The Report of the Marumakkathayam Committee is not of great use to us in this respect except that it gives us an insight into the views of some important witnesses examined before that committee. The only question referred to them regarding partition related to thavazhee partition.

The opponents of individual partition urge the following as their main objections :—

Firstly, they apprehend that women will suffer most when individual partition is effected. The marriage-law being what it is, the position of women is said to be neither safe nor secure.

Secondly, when the tarward is declared partible, the holdings will be split up into fragments and there will be ampler facilities for alienation of the specific shares of each individual. It is urged that in course of time the Nairs are likely to become extinct as a community that can command either wealth, prestige or influence.

Thirdly it is contended that in the case of poor tarwads possessing properties which may not admit of convenient partition considerable hardship and inconvenience will be caused when the right to individual partition is conferred.

I must confess that some of the objections referred to above deserve more than a passing notice and have to be answered before we can decide in favour of individual partition. It is wrong to suppose that individual partition is an unmixed blessing or that no partition is an absolute evil. In the social sphere one cannot and ought not to dogmatise. We have to carefully consider both sides of the question and make all reasonable attempts at remedying the existing evils and legislate in such a manner that the law when passed will result in the greatest good of the greatest number.

Let us now consider if the objections above pointed out are real or fancied, and, if real, whether they can be obviated. The first and the main objection relates to the position of women after partition. It is no doubt true that at present the woman has got a tarwad home and is entitled to be maintained by the karanavan out of tarwad funds. But as a matter of fact we find that even in rich Tarwads, with very few exceptions, the women are not properly looked after and seldom get justice at the hands of the karanavan. In several cases, the women do not possess facilities to go to a court of law and ask for a maintenance decree against the karanavan. Still we come across a large file of maintenance suits in the civil courts of the land. It cannot therefore be said that when other conditions remain as they are the woman will be put to any greater loss or trouble when she is declared entitled to a specific share in the tarwad property. The inducement to actual separation will come about in the case of a woman only when it is rendered absolutely inevitable. If, however, a karanavan or a brother be solicitous about her welfare, there is nothing that stands in the way of his helping her even though she may be entitled in law to a portion of the property.

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There is however one real danger that we have to guard against in the interests of women. When individual partition takes full effect, the woman will be separated from the tarward just as any other individual. In other words, she is entirely dependent on her husband. As it is, the law regulating the rights and obligations of husband and wife does not adequately safeguard the interests of women. When once she is cut off from the tarwad, she should have a firm stand with her husband. The divorce is now a very easy process. I do not want that divorce should be prohibited. But I do insist that capricious divorces should be more strictly discouraged with a view to check capricious repudiation. The President of the Malabar Marriage Commission, the late Mr. Justice Muthuswami Aiyar, proposed the payment of compensation to the extent of one-fourth of the repudiator's self-acquired property in case it was sought without just cause. That in such cases the wronged wife should be entitled to a share of the husband's property was the opinion expressed to me by Sir. C. Sankaran Nair when I had the privilege of an interview with him on this matter in March last. I am further of opinion that the compensation of Rs. 2,000 as the maximum is too low. It fetches but Rs. 10 per mensem at 6 per cent. interest and this will hardly suffice for one meal a day. It is not a maximum so much as a minimum that is required to operate as an effective check upon capricious divorce.

Again, to safeguard the interests of women, it may also be desirable to impose a check on the unfettered discretion of the husband to alienate the properties obtained by him on partition. The husband should have the power to alienate such properties only with the consent of the wife or children or subject only to their right of maintenance, the same being made a charge on the properties. In that case, the woman's interests will be quite safe and the husband will have new responsibilities which might certainly strengthen the marriage tie. Further, when such a check is imposed on the husband, the apprehensions entertained in certain quarters as a result of the grant of absolute powers of free alienation may also give way. I have only pointed out in broad outline how we might proceed to introduce individual partition without at the same time sacrificing or jeopardising the interests of women. Some of us might remember what Sir C. Sankaran Nair uttered as President of the Keraliya Nair Samajam a few years ago. He was decidedly in favour of partition; but he said that the marriage law ought to be placed on a stable foundation so as to safeguard the interests of women before partition was allowed. I wanted further enlightenment on this subject and when I interviewed him last March he explained to me what he meant by safeguarding the interests of women. The rough outline that I sketched above is substantially in agreement with his ideas on the subject. This matter can be taken up in greater detail and discussed more fully at other stages of the Bill. For the above reasons I am of opinion that the objection raised on account of the change in the status of women can well be met and ample safeguard can be provided in their behalf along with the introduction of individual partition.

The second objection raised is the disintegration of the tarwad and the disaster and ruin that will befall the community consequent upon the grant of absolute powers of alienation to every individual member. It is here that sentiment plays a more prominent part than reason and sound common sense. It would appear that at present amity and goodwill, peace and harmony reign supreme in the tarwads and that individual partition is something that is going to bring about a catastrophic change. As a matter of fact, the process of disintegration has long been at work and partition will surely hasten the same. Apart from sentiment, it is a matter for serious examination whether, after all, individual partition spells nothing but ruin and disaster. Mr. C. V. Raman Pillai B. A., who was a very strong opponent of partition, once described the internal condition of a Nair Tarwad as follows :—"It is true that injustice and malfeasance on the part of the karanavan are rampant and litigation has come to be looked upon even as a means of living. Internecine feuds in tarwads and the consequent suits with the karnavan and anandaravans arrayed as contending factions are impoverishing an already poor community. There are tales of woe told of arbitrary karnavans and troublesome anandaravans and it is high time for measures being adopted towards setting matters right." Mr. K. G. Parameswara Menon B. A. & B. L., District Judge, observed:—"I do not think it will be seriously disputed that in a great majority of the tarwads, instead of unanimity and mutual co-operation, what one really finds is disunion and mutual ill-will. This is no matter for surprise at all; for unless the laws of nature have been amended considerably, we cannot expect to find anything like cohesion or strength in a combination of mutually repellent forces. The credit of the average tarwads will likewise be found to be very low, and it cannot well be otherwise, for the credit of a country, where a civil war is being waged with determination on both sides, cannot ordinarily be high. And lastly, if prestige has any place,

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it is surely not in a tarwad, one of the common pastimes of whose members is the institution of criminal proceedings against each other for assault, theft, forgery and even attempts to commit murder."

The tarwad properties are already heavily encumbered. The karanavan has no special interest in improving the tarwad for the simple reason that he derives no special benefit on that account. The tendency of human nature is to acquire as much property for himself as possible so that it may be given to his own descendants or in other words to those for whom he has natural love and affection. I am aware that there *are* karanavans who have very great regard for their anandaravans. But they are not many. Even they would naturally be partial to their wives and children. It often happens that for one act of kindness towards the wife and children some anandaravans quarrel with a karanavan who may otherwise be an ideal manager. In course of time even such karanavans become half-hearted and indifferent, and the tarwad suffers. It is almost impossible to hinder the process of disintegration of the existing tarwad system. As observed by the Marumakkathayam Committee, the disintegration of the family is bound to come on with the evolution of society and the activity of economic forces.

It is unreasonable to expect the junior members to take interest in the improvement of the tarwad properties, for although the tarwad belongs to all, the properties belong to none. The idea of self-acquisition is more prominent with the junior member and he will not care to waste his money or energy upon improving a property which he cannot call his own. It is oftentimes urged that an allotment for maintenance should suffice and the tarwad system may be preserved intact. Even then, there will be no inducement for effecting permanent improvements on the property since the property may be resumed by the karanavan and fresh arrangements made for maintenance. The real clash is between individual ownership and corporate ownership. Individual ownership alone spurs you on to diligence. It goes without saying that individual partition will break up the block which is of use at present, if at all, only to the karnavan and of more than doubtful benefit to the junior members. But is it unreasonable to suppose that when the land is distributed among the individual members, each may become the nucleus of a large estate in future? As observed by Mr. K. P. Padmanabha Menon, why should we be so pessimistic as to suppose that the individual member would not make the best use of the land and that the chances are that it would be frittered away? The above learned writer says: "In my view what is needed to set the Nairs on their legs is to confer on them individual rights to property and leave them unshackled to launch upon any industry or enterprise best calculated to lead them to prosperity. Have we no confidence in the energy, the ambition and the anxiety of our young men, the rising hope of the race, to prosper, to become rich and add to the material wealth of the community? But why distrust young men at all? They are the solace of our growing age. They deserve our unqualified confidence. Their intellectual capacity is second to none. Their education, I mean the education which many of them have been able to secure in spite of the Marumakathayam system, is a sufficient guarantee for their being able to keep clear of the shoals and quicksands, the dangerous paths to destruction". The young men have come in for a great deal of adverse criticism when the question of individual partition is discussed. If the young men are anxious for partition they are rightly so and they are in safe and good company. More than half a century ago, long before the so-called young enthusiasts for partition were born—that eminent statesman who was then the Dewan of the State (Sir T. Madhava Row) proposed to legislate for individual partition with a view to liberate Malayalees from the tyranny of karnavans. The learned President of the Malabar Marriage Commission—presumably an elderly gentleman—Sir Muthuswami Aiyar—said: "When the time arises, the legitimate mode of breaking up the tarwad system consists in the introduction, as a disintegrating factor, of an individual right of partition in respect of tarwad property."

The late Mr. Justice K. Kochukrishna Marar B. A. & B. L. stated before the Marumakkathayam Committee as follows:—"To my mind the right to claim individual partition will alone give anything like adequate relief. It may be considered that the disruption of the tarwad and the economic ruin of the country will be the consequences following from it. The fear is quite unfounded. I am a Marumakkathayee in name as well as in reality, and, by instinct and tradition I am pledged to support the Marumakkathayam system so long as there is any chance of that being done. Paradoxical as it may seem, my attempt is to introduce into it an element of reform which will divest it of its unnaturalness and allow it to survive in the struggle for existence. It is nothing but an application of the principle recognised as sound by experience and adhered to in practice by British statesmen in maintaining their world-wide empire. Give them the independence which is the food they live on, the breath of their nostrils, and they not only allow the ties which attach them to the mother country to remain unbroken, but love it,

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respect it and even feel proud of it. My proposal does not involve anything more than an assurance given to the anandaravan that, *when the census of the tarwad comes to be taken, he will be counted as an integer and not a cypher as hitherto.*"

Substantially the same view is held by several other eminent judges and practitioners both in Travancore and Madras who have had occasion to deal with Malabar law and Malabar tarwads.

The third objection urged is that the estates will be split up into too small holdings to admit of convenient enjoyment and small estates cannot be partitioned without causing great hardship. Some of the eminent economists such as Sidgwick and Marshall are of opinion that the collective ownership of property has been the most important of all causes which have delayed the growth of the spirit of enterprise among mankind. A small proprietor is of all improvers the most industrious, the most intelligent and the most successful. He is also the most enterprising and has the strongest incentive to diligence. At any rate even when cultivation is held on a larger scale and jointly, it is desirable to define the specific share to which each co-owner is entitled. When individual partition is introduced it may safely be left to the good sense of the sharers to adjust the shares without reducing each agricultural holding below the minimum area for efficient cultivation. In this connection, to remove all apprehensions on this point, the provisions in the Indian Partition Act may well be incorporated in the Nair Regulation. Under the above Act when it appears that by reason of the nature of the property or of the nature of the shareholders or of any other special circumstance, a division of the property cannot be reasonably or conveniently made, the court may direct on the request of the shareholders the sale of the property and distribution of the proceeds, and the court may prescribe the procedure to be adopted when the share-holders undertake to buy the shares.

It will thus be seen that the real objections raised are such as can be avoided and that individual partition with proper safeguards will not prejudicially affect the community. Now let us see how far thavazhee partition will remedy the existing evils. No doubt such partition will have the effect of splitting up unwieldy tarwads and bringing each thavazhee under the direct control of its karanavan. But such a step is most inadequate to meet the existing evils. Mr. K. P. Padmanabha Menon in his able memorandum on the subject observes as follows :—" I think with Mr. C. V. Raman Pillai that a thavazhee is only a microcosm of a tarwad and the ills and evils present in the latter adhere to the former. The evils of the system exist in both alike, though in different degrees. Instead of a common tarwad with its karnavan, thavazhee partition will create a number of tarwads with as many karnavars weilding powers which are now general and not looked upon with favour." No doubt Mr. Tampi's Bill provides that on the death of the lineal ascendant or with her consent the male member or a female without issue may claim partition and separate. But what about the female member with issue ? It is most unlikely that the male member or female without issue will claim partition since as a result of *per capita* division the share that may fall to him or her will be comparatively very small. There is no real security unless the female member with issue is also given the right to separate from the male member. To me it appears desirable to provide for an effective remedy for existing evils instead of attempting to make piecemeal amendments to a social measure.

Opposition there will be for effecting any change in social legislation. One cannot expect unanimity of views in this matter. Oftentimes it happens that each man's opinion on this question is largely coloured by the circumstances of his own family. The Legislature should aim at laying down what it reasonably believes to be for the greatest good of the greatest number. The principle underlying individual partition is generally accepted as unexceptionable. But certain evils are apprehended as likely to result from the application of the principle in practice. It has to be considered whether they are real or fancied, and, if real, ample safeguards and remedies have to be devised. *With those safeguards* individual partition ought to be declared permissible under law.

Before closing I wish to deal with one or two new provisions contained in Mr. Tampi's Bill. The chapter dealing with management of the tarwad requires substantial modifications. For, under the conditions provided therein which are more harassing than stringent, tarwad management is rendered well-nigh impossible even for the best of karanavans. The provisions will tend to create perpetual strife and dissension and instead of efficient management they will create deadlocks which will certainly not further the interests of the Tarwad. I can welcome these provisions only because they would precipitate a good many voluntary resignations of karanavanships and hasten the day for partition. Perhaps my friend the mover of the Bill did not intend this object in introducing such provisions.

There is complete unanimity of opinion among the Nairs—and naturally too—regarding the proposed change whereby the wife and children of a non-Nair having martial

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relationship with a Nair female are declared entitled to a share in the self-acquisition of such a non-Nair. It is not desirable to proceed to partition or to effect any change in the existing law relating to the Nairs before securing the equality of rights enunciated in the above provision in the new Bill.

There are several substantial modifications to be made in various Sections of the new Bill. But the matter can be fully and more profitably discussed during the subsequent stages of the Bill.

Subject to the observations made above I would affirm the principle of the Bill."

Mr. Kumaran Asan:—

"I support the principle of the Bill.

President:—

"In the case of a piece of social legislation like the one before the Council, Government would not impose any restriction on their officers, especially the Nair officers who may take an interest in it. The official members may therefore express their opinion on the Bill, if they like."

Dr. Kunjan Pillai:—

"Sir,

I beg to thank you for the concession granted to official members in allowing them to express their opinions on this piece of social legislation, and, in availing myself of this concession, I only wish to make a few general observations on the most important principles of the Bill, leaving to a future stage the detailed consideration of its various Sections.

The Bill that is now before the Council is in many respects an improvement upon the one which Mr. Tampi obtained permission to introduce into the Council some time ago. Some of its provisions are so useful and necessary that they are not likely to meet with any opposition from the Nair community. On the other hand, there are some provisions which will in practice be found unworkable or which may give rise to a warm controversy both in the Council and outside it. With due deference to my friend Mr. Tampi, I must say that I disagree with his views in regard to the Sections dealing with the tarwad and its management. The responsibilities and duties devolving on the karanavan of a tarwad under this Bill are so difficult and onerous that his position will not be by any means an enviable one. He has to manage the tarwad properties and distribute the income among the members of the tarwad whether they live in the tarwad house or elsewhere. He has to keep correct accounts of the income and expenditure of the Tarwad and produce the same for inspection by the senior anandaravans twice a year. What is to transpire at the inspection is not stated. If the anandaravans detect any flaw in the accounts it is not clear what course they are to adopt to get it rectified. The Karanavan will naturally maintain that his accounts are correct and the difference will then have to be settled in a court of law. The karanavan has also to maintain an inventory of all movable and immovable properties of the tarwad and produce it for inspection by the anandaravans on a month's notice being given to him by a majority of the latter. Except with the written consent of all the major anandaravans, the karanavan cannot sell or otherwise alienate, not only the immovable but even the movable properties, such as ornaments, vessels, elephants, milch-cows, etc. He is denied the power of disposing of even a cow if any of the major anandaravans objects to such disposal. Though such severe and irksome restrictions are imposed upon his freedom of action, he is not to get any extra remuneration for all the worries he undergoes unless he belongs to a tarwad in such a flourishing condition that he is able to make savings and acquire additional properties. Unfortunately, a large majority of the tarwads are not in a flourishing condition, and it is doubtful whether any member of such tarwads will be prepared to accept the karanavanship under the restrictions and limitations prescribed in the Bill. Mr. Tampi's attempt to clip the wings of the karanavan is no doubt actuated by the best of motives, for the powers that he now possesses for the misuse of tarwad properties are so great that, unless they are curtailed and a strict watch is kept over his management, the tarwad will not have a peaceful and prosperous existence. But it must be pointed out that the conditions sought to be imposed are so severe that the management of tarwads under such conditions will become practically impossible, and if this Bill becomes law as it is, tarwads will suffer not from mismanagement as at present, but from want of management, which is still worse. The breaking up of tarwads will under these circumstances become a matter of necessity and, if so, I fail to see why provision for such breaking up should not be included in this Bill itself. Mr. Tampi has no doubt made provision in his Bill for the partition of tarwad properties among thavazhees. But this will only aggravate the anticipated evil, for where there is one tarwad now, he is going to create several tarwads. If it is admitted that Marumakkathayam is unsuited to modern conditions and that any attempt to prop it up by artificial means will only lead to more

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evils. Why hesitate to abolish it and introduce Makkathayam, pure and simple.? From the large volume of public opinion expressed in the vernacular press and on the platform it is seen that there is hardly anybody in favour of that original unalloyed form of Marumakkathayam. In that form it has disappeared from our midst with the passing of the Nair Regulation. It had its days when the karanavan was able to reign supreme in his tarwad and when the anandaravans were no better than dumb slaves implicitly carrying out the orders of the master without a word of protest or grumbling. But conditions have now changed. The anandaravans have begun to realise their real position and to feel that they have as much independent individuality as the karanavan. They know that they have as much right over the tarwad property as the karanavan himself and that he is not their master, but only their manager. Under such altered conditions, it is utterly impracticable to restore Marumakkathayam to its original position or even to perpetuate it in its present mutilated form. There is no doubt a section of the Nair community opposed to the total abolition of Marumakkathayam all at once. They are so, not because they have no faith in individual partition and Makkathayam, but because they want to take the community through intermediate stages along the line of least resistance to the goal which they aim at. It is no doubt good to hasten slowly in introducing changes into the social customs of a community except, however, in those circumstances in which such slow progress is likely to drag the community into more serious evils than those it suffers from at present. My sincere opinion is that the sufferings of the Nair community will become worse if thavazhee partition is allowed and if at the same time impracticable and unworkable conditions are imposed on the management of tarwad properties.

The opposition to individual partition and the adoption of Makkathayam is not a negligible factor and let us therefore consider whether there is any force in the arguments advanced from that side. The sentimental objection which is very often brought forward as an argument against the breaking up of long-standing tarwards can easily be brushed aside, for in discussions of this kind sentiments must give place to reason and imagination to hard facts. It is an undeniable fact that dissensions and litigation eat into the vitals of most tarwards like a canker and in the face of this fact to say that on sentimental grounds tarwards should not be broken up does not stand to reason. Another argument that is advanced against individual partition, *viz.*, that individuals if they are given their shares will sell away what little they get and become paupers and loafers, is based on incorrect data. Instances of this kind are very rare and to draw a general inference from one or two stray instances that may come to one's notice is certainly erroneous. The condition of other communities who follow Makkathayam and allow individual partition amply bears out the truth of the above statement. It is beyond one's comprehension why in the case of the Nairs alone individual partition should result in the wholesale ruination of all their properties. This is only a groundless fear entertained by some, and men like Sir C. Sankaran Nair and others who have thought over the matter deeply and whose opinion carries the weight of experience and authority think otherwise. Among other objections urged against individual partition the one based on economic grounds deserves to be considered. Economists all the world over press upon the attention of the authorities the necessity of consolidating and constituting what they call economic holdings, *i. e.*, holdings large enough to admit of the development of cultivation on scientific lines by the use of labour-saving machinery, etc. It may be considered strange that when the tendency everywhere else is to fight for consolidation of holdings the Nairs alone should clamour for the subdivision and fragmentation of their properties. The reason for this disruptive tendency among Nairs is not far to seek. Their present holdings are neither economic nor natural, nor do they benefit the large majority of their real owners. The tarward property is no man's property though every member of the tarward has equal rights over it, and nobody takes sufficient interest in its development and proper management. The karanavan does not mind whether the property improves or deteriorates as long as he can get something out of it to meet his wants and the anandravans have neither the right nor the incentive to do anything towards its development. The improvement of tarward properties is not therefore possible under the existing system of inheritance, and this is what one finds in actual practice in the case of most tarwards. From my experience I can say that, of all the communities in the State, the Nairs are least responsive to appeals for the introduction of improved methods of cultivation. This is so, not because of their want of intelligence to appreciate the importance of scientific agriculture, but because of the feeling that they and their children will not be able to enjoy the fruits of their labour. If the Nair community should advance and its material condition should improve, the present unnatural law of Marumakkathayam must be replaced by the natural law of Makkathayam which governs all progressive communities. A half-way measure like the one proposed by Mr. Tampi will not answer the purpose effectively, but in the absence of a

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more thorough-going measure I am willing to support Mr. Tampi's Bill. I wish, however, to make one suggestion for consideration by Mr. Tampi. The present system of inheritance among Nairs is a mixture of Marumakkathayam and Makkathayam, and such a mixed system can never be conducive to the progress of any community. My suggestion is that those who could be allowed to free themselves from the fetters of the mixed system without detriment to the interests of others should be given a chance to do so, and I would, therefore, say that, if at the time of marriage of a male or female both the husband and wife agreed to constitute a Makkathayam family, they must have the right to claim their share of their respective tarwad properties. They will then form a separate unit following Makkathayam. If such a provision is included in Mr. Tampi's Bill it may satisfy a large section of the Nair community now fighting for individual partition and Makkathayam. On the hope that my suggestion will be duly considered at a later stage of the Bill, I beg to support the motion for the affirmation of the general principles of the Bill."

Mr. Trivikramar Vasudevar said that the proposed legislation would adversely effect all other communities than Nairs. Any social legislation in order that it might be popular should be such as not to interfere with the rights of others. The Bill excluded certain sections of the Nair community itself. There could only be one law governing all the various divisions and subdivisions of one community. The next point was that the Bill badly hit communities which had contracted marital relationship with the Nairs without any idea that a law would be passed binding them and their property. The Bill would further strain the existing relationship between the Nairs and the non-Nairs. Most of the provisions of the Bill had been borrowed from the Cochin Nair Regulation which had been found to be a source of trouble in that country. Again some non-Nairs such as Rajas, Nambudiris and Tampans were prohibited from marrying in their own castes. Some Nair families themselves preferred to have their women married by those people. The present Bill would not be liked by such men. They would have to be consulted before the provisions relating to marriage became law. What we understood from Mr. Tampi was that the opinions of other communities need not be taken in the matter.

Mr. Raman Tampi:—"I did not say so."

Mr. Vasudevar continuing said that most of the provisions relating to marriage were borrowed from the Cochin Regulation. The Cochin Regulation contained a provision for the registry of marriages; but the present Bill made no provision for it. Such a registry was necessary. In the case of respectable people no legal provision was necessary, but in the case of some people it was necessary, for false cases might be trumped up easily with the help of a few witnesses in order to deceive innocent people. Again the present Bill did not make any provision for individual partition which had been desired by the younger generation among the Nairs. In his (the speaker) community only the eldest member could marry a caste wife. The others married Nair women. When the eldest member died, the next member who became the manager could marry a caste wife. According to the Bill he would have to divorce his Nair wife or remain without marrying a caste wife. Marital relation was not contracted simply for the sake of money and could not be separated likewise. Many people might not like to divorce their Nair wives. To enforce such a thing by law was hard. Similarily in regard to inheritance the argument for introducing a provision to the effect that a Nair wife and children should inherit one-half of the non-Nair husband's properties was that the Nair wife and children were often deserted by non-Nair husbands. Such instances were not rare among the Nair husbands themselves.

Mr. K. Parameswaran Pillai:—

"Sir,

I am sorry that I am unable to support the main provisions of the Bill. A careful perusal of the Bill will convince anybody that it has not been conceived in a liberal spirit with a view to root out the existing evils in the social system of the community concerned and to aid its future advancement. No doubt, the learned mover has introduced some changes in the existing Regulation under all the chapters and has added a number of new provisions, but I am unable to see exactly the main purpose and practical advantages of most of the changes and new provisions. It is easy to propose amendments in existing social laws; and in the present case I find that most of the amendments have been taken from the Cochin Nair Regulation recently passed; but it is extremely difficult to see correctly what amendments are absolutely necessary, whether they are suited to the conditions, ideals and aspirations of the community and how far they would be of practical advantage to it. A stable and settled social system is as much essential for the advancement of a community as a settled Government and it will not be a wise policy to disturb social systems constantly even if they have some defects. It is only 8 years since certain

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changes were introduced in the social system of the Nair community by the passing of the Nair Regulation and I am sure that everybody will admit that it is too early to think of introducing further changes unless they are absolutely necessary for the advancement of the community. Of course, I admit that the Nair Regulation, I of 1088, did not go far to meet the wishes and ideals of the advanced and thinking portion of the community, but at the same time the changes introduced by it unsettled the social system of the community to some extent. It is therefore all the more necessary that the further changes proposed to be introduced should satisfy their ideals and place their social system on a firm footing so that there may not be any necessity to disturb it at least in the near future. Now, what are the ideals and aspirations of the Nair community, *i. e.*, the advanced and thinking portion of it, in regard to their social system? The fundamental ideal is nothing but the common ideal of all civilised communities, *viz.*, individual liberty, individual development, individual progress and individual happiness. Whatever may be the excellence of the joint family or Marumakkathayam system of the Nairs, it did not aim at the above ideals or encourage them. The system was good for the preservation of families, but not for the progress of the individuals and the community. The cardinal principles of the system are individual subordination, individual submission and individual sacrifice for the common good of the family or tarwad. The individual was not reckoned at all, but only the family, and even if a family consisted of illiterate, indolent and useless members, the family had a status if it possessed some wealth and influence. The accepted modern theory is that the individual should have the fullest liberty in political, social and religious matters so as to afford him ample scope for all-round development and progress.

Keeping these ideals in view, let us examine the provisions of the present Bill, and see how far they would satisfy the Nair community and aid its progress.

The first new provision is Section 4, clauses (*a*) and (*b*).

I do not propose to say anything against this Section or oppose it from an ideal point of view. All that I propose to ask is whether this provision is necessary in the present state of advancement of the Nair community. Is poligamy so common among the Nairs as to invoke the aid of the law to prevent it? I know that this question was before the Marumakkathayam Commission and for certain valid and practical reasons the provision was not made in the Regulation of 1088. Has the evil increased since the passing of the Regulation or has the ideal of the community in this matter undergone any radical change? I think it will be admitted on all hands that polygamy is practically dying out among the Nairs and the members of the community, including even the conservatives, do not view it with approval. The Nairs are Hindus and their religion is Hinduism. What is marriage according to the tenets of the Hindu religion? It is not a civil contract as among some other communities. According to the Hindu religion, marriage is a sacrament performed for the purpose of perpetuating one's own line and the birth of a son to a Hindu father is considered as liberation for him in this as well as in the future world. Supposing a marriage has proved issueless, will not the natural desire of both the husband and the wife to beget a son for the perpetuation of the line by the husband performing a second marriage? Now the question is, will it be in keeping with natural feeling to divorce the first wife and marry a second or to keep the first wife as the mother and mistress of the family and bring in a second wife not to supersede the first, but to hold a subordinate position to her in the family? There may be other cases also in which a second marriage may become absolutely necessary owing to some incurable disease of the first wife. Will it be considered as perfect morality or in keeping with human feeling to divorce the first wife under such circumstances and to marry a second? Why should difficulties be placed in such cases by passing a law more out of sentiment than out of necessity, because as stated above polygamy is gradually dying out and will practically cease to exist among the Nairs at no distant date? Is it natural to suppose that a Nair would think of keeping more than one wife in these hard days when it is difficult to maintain even one and when free divorce is allowed by law? However I do not wish to speak anything more on this point.

The next change made is in Section 11, Chapter III. Unmarried major daughters are also included among those entitled to be maintained by the father. By specifically including unmarried major daughters, is it to be presumed that the father is not bound to educate and maintain his major sons till they are able to earn their livelihood? Majority is attained by the completion of 18 years of age and everybody knows that a boy will not be completing his education at that age. Generally boys enter the college at that age and their higher education begins only then. By the change introduced in the Marumakkathayam system and the adoption of the mixed system of inheritance, the education of the boys of the community has been affected to some extent. The father has not taken up the responsibility in the majority of cases and the karanavan has divested himself completely of what little responsibility he felt in olden days. As it is, there is nobody responsible for the education of the boys. Of course all educated men feel that it is their

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duty to educate their sons, but they form only a minority. This is one of the evils of the mixed system which vitally affects the future progress of the community and if a law is necessary on any point, it is on this. I think that it is necessary to make a clear provision that the father is bound to maintain and educate his major sons till they are able to earn their livelihood, just as he is bound to maintain his major daughters till they are married. Of course this provision is necessary only if the mixed system of inheritance and succession is to be retained. I shall deal with the evils of the mixed system when I come to that chapter.

Section 12. The words '*in respect of their person and property*' are added to this section. No special reason is given for the addition. Does guardianship extend to anything else than person and property? If so, why should those things be excluded? If not, why should these words be added?

Again according to the existing Section, the guardianship of the husband over his minor wife and of the father over his minor children exists only if they are maintained by him or live with him. Is it not time to take away this condition? The maintenance of the wife and children is not optional but obligatory on the husband and father and as such I think that it should be made equally obligatory on the part of the wife to live with the husband and the legal guardianship of the children should vest in the father without any condition. One of the existing evils, especially in North Travancore, is that the husband allows his wife to live in the tarwad house and to be maintained by the tarwad even after she has attained majority, and in most cases the children also live in the tarwad house and are maintained by the tarwad. A reform in this direction appears to be very necessary. Whatever may be the position of the husband, it should be made obligatory on his part to take his wife with him after she attains majority and maintain her and the children. It should also be made obligatory on the part of the wife to go and live with the husband after she has attained majority. It is absolutely necessary to put an effective check on the marriages of persons who are not able to maintain their wives and children and it is also necessary to recognise the status of the husband once he has been allowed to marry, however poor he and his family may be when compared to the wife's family. This is calculated to elevate the standard of morality of the community and to minimise the want of good feeling and harmony now existing among the members of the family who live together in the common family house. I am sure that separate living of the members would remove half the evils existing in the Marumakkathayam system now.

Section 13. This is a new section. It is doubtful whether this Section is necessary. The previous Section has clearly laid down that the father shall be the legal guardian *of his minor* children and that as regards property his guardianship shall extend only *to that given by him* to his wife or children. However I have no serious objection to this Section as it does not introduce any material change.

Section 14. The main and material change introduced by Regulation I of 1088 was in the system of inheritance of the self-acquired or separate property of the Nairs. The old customary law was that the self-acquisition of a member lapsed to the tarwad on his death. Gradually, in accordance with the feeling of the community, courts began to decide that the self-acquisition of a junior member of a tarwad should devolve on his mother's thavazhee and that, only in the absence of such thavazhee should it pass on to the remote thavazhee. This change introduced in the customary law by judicial decisions was recognised by Regulation I of 1088 with the further change that one-half of the self-acquisition of a Nair shall devolve on his wife and children and the other half on his mother's thavazhee, if he died intestate. I do not think that this change in the law of intestate succession has materially benefited the community. I know that this opinion of mine will not pass unchallenged. It will be said that the wife and children of a Marumakkathayee had no legal right whatever to his property and it will be quite unreasonable to say that the law passed with a view to secure this right has not materially benefited the community. My contention is that, if it is not possible to practically exercise a right, there is not much use in possessing that right. In the present case, so far as I know, practical difficulties of exercising the right have been found to be so great that very few people have cared to take advantage of this provision of the law. This provision was introduced at the instance of the Marumakkathayam Commission. Has the President or any one of the members of the Commission taken advantage of this statutory provision in his own case? If I am not out of order in mentioning it, I may say that none of them have done so. The President and the members, including the deceased member, Mr. Padmanabha Menon, have taken advantage of the testamentary power in disposing of their self-acquisition. How is it that none of them had confidence in the provision of the law of intestate succession which was passed at their instance for the benefit of the community? So far as I know, very few people belonging to Marumakkathayam families who have any self-acquisition have hitherto taken advantage of the provision of the new law of intestate suc-

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cession. The educated classes, who ought to set the example, generally write a will and deposit it to be opened and registered after their death. But the ordinary ryots generally register their wills openly, of course reserving the power of modifying or cancelling them whenever they like. However, very few people think that they can safely leave their acquisitions to follow the course of the law of intestate succession. First of all, if there are several channels through which one's acquisition has to flow, it will not fertilise any region unless the supply is enormous, which will not ordinarily be the case in these hard days, when one finds so much difficulty to meet even the bare necessities by one's means. In the case of the Nairs, their self-acquisition has to flow through two opposing channels which not only cease to flow when they meet, but will create great disturbance and even a whirlpool. In fact I do not think that it will be possible to allow the law to take its natural course without tedious, expensive and uncertain litigation in the civil courts. How can such a law be of any benefit to the community? I am decidedly of opinion that the self-acquisition of a Nair who dies intestate should flow through only one channel for the material, moral and economic well-being of the community. It was flowing only through one channel before the introduction of the new law. Now the question is, whether it should be allowed to flow through the old channel or through a new channel. From the large volume of public opinion among the Nairs and from their everyday conduct, it can more or less be gathered that they want their self-acquisitions to flow through a new channel, *viz.*, to their wives and children. Why should the law stand in the way of the community? Why not amend it according to their wishes and cherished ideals? Since there is the full power of testamentary disposition an acquirer can make ample provision for the members of his thavazhee during his life time, if they stand in need of it and if he is inclined to do it. The most important amendment that has to be made therefore is that of section 14 of the existing Regulation relating to intestate succession. Instead of doing so, the learned mover has introduced an explanation to that section. It is not a mere explanation. It is an entirely new and important provision vitally affecting the existing Marumakkathayam law. The so-called explanation says that one-third of the acquisitions made by a karanavan or other managing member with the income of the tarwad property shall be treated as his self-acquired property. It is stated in the Objects and Reasons that the explanation is intended to meet a want which is very much felt, that, if the karanavans work for the good of the tarwad and add to its wealth, some compensation should in all fairness be allowed to them and that the proposed provision will act as an incentive to them to better conserve the income of the tarwad. Now I ask, does the learned mover actually believe that by this provision he will be able to compensate really hard-working karanavans or give an incentive to those who are not now doing any work, to work for the good of the tarwad and to conserve its income? I may classify Marumakkathayam Tarwads into four, roughly :—

(1) Tarwads which have very little property, or which are so much involved in debt that it will not be possible to maintain the members with the income of the tarwad by any means;

(2) Tarwads which have some properties and also some debts and in which it will be possible to maintain the members only if the karanavan works hard;

(3) Tarwads which have properties from the income of which the members can maintain themselves in the simple ordinary way, but which will not leave any surplus; and

(4) Tarwads which have properties from the income of which, after maintaining the members, a surplus will be left every year.

The first class need not be taken into account for our purpose. For, even if the karanavans do very hard work they will not be able to maintain themselves and the other members with the income of the tarwad.

The large majority of the Nair tarwads come under the second class. Now what is the compensation for the karanavans of such tarwads for doing very hard work by which alone they will be able to maintain the tarwad? It will not be possible for them to make any acquisition and get a share out of it under the proposed provision. And if they do not work hard, the members will be reduced to starvation. Is it not to such karanavans that some compensation has to be allowed in all fairness and justice? How can the new provision help them?

In the case of the third class, it may be possible to lay by something after meeting the expenditure for the maintenance of the family, if the karanavan works hard and try all possible means to do so. But is it possible for him to do so under the conditions in which he is allowed to work? These conditions are given under chapter VI. My firm conviction is that not only will no karanavan work for the tarwad under the conditions prescribed, but very few people will even care to become karanavans in spite of the incentive offered under the new provision.

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In the fourth class of tarwads which form only a small percentage, there will be surplus and acquisitions by means of it without much effort on the part on the karanavan. Is it natural to suppose that those karanavans would care to work hard with a view to increase the surplus so that their children might get a share of the acquisitions made out of that surplus after their death? Is it easy to establish that the acquisitions were made with the actual income of the tarwad property? The previous karanavans might have lent money on mortgage and hypothecation, and these amounts might be realised during the management of the present karanavan. He may invest that amount with the surplus income of the tarwad on landed properties, and, in such cases, it will be difficult to settle what portion of the acquisition was made with the actual income of the tarwad and what portion with the money lent previously, but recovered during the management of the present karanavan. This could be determined only by the civil courts after long litigation. It is not reasonable to expect that the karanavans of tarwads which have a surplus income to invest, would invest the whole of it for the benefit of the Tarwad, so that their wives and children might get a share of it by following the uncertainties of law. Whatever the karanavans may be, they are not such simpletons to do that. They would naturally acquire properties for the benefit of their wives and children with a portion of the surplus income, if they are good karanavans, so that there might not be any complication after their death. So long as the tarwad is maintained properly, the junior member may not grudge the karanavans giving a portion of the income to their wives and children, and even if they grudge it, they know they cannot help it. It is not easy to remove a karanavan from his office by means of a civil suit and even if one is removed there is no guarantee that the next karanavan will not do the same thing, because human nature cannot be changed. The proposed provision therefore will not benefit the majority of hard-working karanavans in Marumakkathayam tarwads if they do hard work because the majority of the families are poor, having no surplus income to make new acquisitions. And in the case tarwads which have surplus income for making new acquisitions, it cannot reasonably be expected that the karanavans will take advantage of the provision. Even in the case of one's own self-acquisition without the aid of tarwad income, people have no confidence to allow the existing law of intestate succession to operate. How can there be much confidence in the case of acquisitions with the tarwad income which are further complicated by their very nature?

Section 15. This is a new Section. The observations I have made in regard to section 14 are equally applicable to this Section, and it is further complicated by the fact that the personal law of intestate succession of the husband is different from that of his wife.

Section 17. This Section amends Section 13 of the existing Regulation so far as the possession of the properties of a deceased Nair male who has died intestate is concerned. The possession is proposed to be transferred to the widow and children from the Marumakkathayam heirs. I do not know how this would improve matters so far as litigation is concerned. Instead of the widow and children going to the court themselves they will be dragged to the court by the Marumakkathayam heirs of the deceased, with this difference probably, that the public sympathy which under the existing provision will be in favour of the widow and children will be transferred in favour of the Marumakkathayam heirs.

Section 21. This is a new Section which introduces a new principle in the Marumakkathayam system. The Marumakkathayam law does not recognise the ownership, in the common accepted meaning of that term, of any member of the tarwad to the tarwad properties. The tarwad is recognised as the owner, the karanavan representing the tarwad. All the members have an interest in the tarwad properties, but what that interst is, whether it amounts to co-ownership or only to the right of maintenance out of the income of the tarwad properties, does not appear to have been clearly laid down. Tarwad, according to the definition given in the Regulation, means and includes all the members of a joint family with a community of property. Whether the term community of property means co-proprietorship in the properties, it has not been clearly laid down. The new provision proposes to remove all doubt in the matter and to recognise the co-ownership of members to the tarwad properties. If a member has proprietory interest in any property he must be able to exercise all the rights of a joint proprietor over it. The question naturally arises, is he not competent to transfer his proprietory right over the properties for a consideration? If he transfers his right, are not the courts bound to recognise the right of the alienee to have the share separated and given to him or at least to recognise him as a co-proprietor in the place of the original proprietor? In the latter case a new principle will be introduced in the Marumakkathayam law. The root principle of that law is that no stranger, *i. e.* any one not born in the family, is entitled to any interest in the family property. If the courts recognise the right of the alienee, not only strangers, but people belonging to different castes and different religions and governed by different laws will become members and co-proprietors of Marumakkathayam tarwads so far as the interest

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in the tarwad property is concerned. If, however, the share of the alienee could be separated and given to him, I do not know what prevents the share being separated and given to the original owner himself. Of course, I say all these on the assumption that the ordinary meaning is applicable to the words *proprietory interest* given in the new Section. I do not know whether any different or restricted meaning is intended to be put upon the words.

Sections 23 to 28 propose to further restrict the powers of the karanavans. Already it has been made difficult for any karanavan to manage the tarwad by the restrictions placed by judicial decisions and by the Nair Regulation, I of 1088. my friend, the learned mover, wants to impose further restrictions on the powers of the karanavan so as to make the management of the tarwad an utter impossibility. Somehow or other the idea has got into the minds of some people that the greater the restriction placed on the powers of the karanavan, the better will be the management of the tarwad. When everybody wants more powers and more freedom for the better management of other offices and institutions, it is not known how it is considered that the karanavan of a Marumakkathayam tarwad will be able to manage the tarwad much better if his powers and freedom are curtailed as much as possible. No, Sir, this is a mistaken notion. The more restrictions you place on the karanavan, the more callous and irresponsible he becomes and causes great harm and even utter ruin to the tarwad. Unless there is mutual confidence, love and affection between the karanavan and the junior members, no tarwad can be properly managed. How can there be such confidence and love when such artificial and hard restrictions are placed on the powers of the karanavan and when every action of his is viewed with the greatest suspicion? I do not say that the karanavans are all good people working for the interest of the tarwad. What I wish to say is that even the best of karanavans will become utterly indifferent and irresponsible by placing such hard restrictions on his powers and actions. The karanavan was the absolute monarch of the family and his word was law. Every action of his was presumed to be for the good of the tarwad. He had unlimited powers and commanded the unquestioned confidence, respect and obedience of the junior members. Now, under the proposed provisions, the karanavan has no power even to pledge a family ornament and borrow five rupees urgently for the medical treatment of any member of the family who is on his death-bed or to dispose of a useless cow worth Rs. 15. At the same time he is required to maintain elaborate accounts and inventories and place them before the junior members and wait on them for their examination and approval. He has further to prepare and grant attested copies of the accounts to any junior member who may demand the same. Why not do away with the karanavan instead of making his position so ridiculous? My wonder is how people believe that such a karanavan will manage the tarwad with zeal and earnestness and in the best interests of the tarwad!

I wish to say a word regarding Sections 32 and 33 relating to maintenance. These are new Sections. Section 32 says that every member of a tarwad is entitled to be maintained by the tarwad whether such member lives in the tarwad house or outside, and Section 33 relates to the allotment of properties for maintenance at the option of the member asking for separate maintenance. Is it likely that a member who can get separate maintenance in the shape of money or grain even if he lives outside the family house, would care to ask for allotment of property for such maintenance and incur the inconvenience and risk of cultivating the properties and taking the produce or leasing out and realising the rent himself when there is the karanavan, who is the servant of the tarwad and who is bound to collect the produce and remit to each member for his maintenance wherever he may be? My view is that the deterioration of Marumakkathayam tarwads is more due to the indolence, aversion for work and irresponsibility of the junior members than to the indifference and mismanagement of the karanavans. Why not the junior members be made to do some work at least when they ask for separate maintenance by alloting property to them? I think that all those who do not wish to live in the family house and share the common food of the family should be given separate allotment of property which would fall to the share of each if a *per capita* division is effected, so that they may maintain themselves by working and taking the produce of the properties.

Partition: When the learned mover asked permission to introduce a Bill for thavazhee partition, I stated that thavazhee partition was worse than no partition and that if partition was to be allowed by legislation in Marumakkathayam tarwads it should be individual partition. Since then, I find that there has been a large volume of public opinion in the country in favour of individual partition and against thavazhee partition. The learned mover also withdrew the Bill which he introduced relating to partition, probably in the light of

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public opinion and yet I find that he has made provision only for thavazhee partition in the present Bill. Thavazhee partition is freely taking place among the Nairs by mutual agreement and there is no necessity for a law now on the subject. There are very few Nair families in Travancore in which thavazhee partition has not taken place at one time or other if there was necessity for the same. If no such partition has taken place in any family, it cannot be due to the difficulty of effecting it, but to the want of actual necessity for it. In many tarwads there may not be more than one thavazhee and if there be more than one, there may be female members in one branch only or the members of the different branches may be living amicably. I do not know wherein lies the necessity of passing a law at this stage for thavazhee partition and what is the advantage to the community of such a law. All the evils of the joint family or tarwad system will exist even if thavazhee partition is effected. There will be the much-abused karanavan and the irresponsible junior members, and the tug of war between them cannot cease. The only difference will be that the number of members in the partitioned tarwads will be less than the number in the original tarwad, if there are a number of thavazhees and many members in each thavazhee in a tarwad. As I had stated at the outset, it is individual liberty, individual responsibility and self-reliance that have to be created among the Nairs and these qualities can be produced only if the individual is set free and made to stand on his own legs. The common objection of the anti-partitionists is that if individual partition is sanctioned all the members will ask for partition, that each of them will get only a small share and that the status of the Nair community in wealth and influence will be very much lowered. I was also of this opinion and I have been bestowing some thought on the subject. The subdivision of holdings is not at all good from an economic point of view and especially in the case of an agricultural class like the Nairs. But the tendency of the times and the ideal of the thinking portion of the community are very much against the joint family system and there is absolutely no use in trying to maintain that system by patch-work and temporary supports when the foundation has been shaken and the whole structure is tottering. The best remedy is to pull down the tottering structure and reconstruct it according to modern ideals and requirements on a more solid and substantial foundation. There is no doubt that if individual partition is effected each member will naturally get only a small share, but he can call that his own and has absolute power over it. This will surely teach him self-reliance and create an incentive for work for his betterment. In modern days the status and influence of a community depends upon the status and influence of the individuals comprising it and only free individuals who have the fullest scope for development in all directions will get status and influence in society in the long run. Individual partition, instead of being regarded as an evil which would reduce the status and influence of the community, should, I think, be welcomed as a timely good for the advancement of the community so as to regain its original status and influence, which it has completely lost. I am therefore decidedly of opinion that, if a law is to be made for partition among Nairs, it should be for individual partition, and if such a law cannot be passed now, it is better to leave the community alone. I am sure that the community will effect such partition within the next 10 years, just as it has been and is effecting thavazhee partition without any law on the subject."

Mr. Nidiri:—

"As a member who belongs to a community other than Nairs, I think it is my duty to speak a few words regarding the Bill. I may assure the mover that the Bill will have the sympathy and support of other communities. I wish only to make a few observations with regard to the all-important question of partition.

I have been all along an advocate of individual partition whether it be for the Nairs, Vellalas or Ezhavas. The more I study the subject the more I am convinced of its advantage to the communities who follow the Marumakkathayam sysem of inheritance. But I am sorry that my learned friend, Mr. Raman Tampi, could find his way only to the extent of thavazhee partition. Since the publication of Mr. Tampi's first Bill, we have been receiving resolutions after resolutions from meetings held by Nair ladies and gentlemen who press for individual partition. I had also the good fortune to be present at some of these meetings. The leading papers in the country also discussed the merits and demerits of individual partition as compared with thavazhee partition. The impression produced in my mind as a result of all these agitations is that the majority of the community wants nothing short of individual partition. I do not think that my friend has bestowed sufficient attention in this direction and I doubt whether the conciliatory policy adopted by him would satisfy the general public, especially when marriage has been made very tight by the new provision of his Bill. To my friend the only solution to the problem lies in providing for individual partition at once without postponing it to some time hence. The modern ideas of independence and individuality have adversely affected our young men in their view of tarwads and their karanavans; the angle of their vision is altogether changed. The importance of this aspect has been dealt with at great length

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by my friends Mr. Parameswaran Pillai and Dr. Kunjan Pillai. I fully agree with them in their opinion that provision should be made for individual partition which should ultimately lead to Makkathayam."

Mr. ajaraja Varma:—

So far as the Bill affects the Nair community, I have not much to say. But so far as communities other than Nairs are concerned, I must say that it affects them prejudicially. In the first place, my friend Mr. Trivikraman Vasudevan has pointed out how the provision relating to marriage would be a source of difficulty to the members of his community. There are also other communities who cannot marry in their own caste, and the provisions in question would be a source of trouble to them. Next as regards the provision for inheritance whereby one-half of the self-acquired properties of a non-Nair husband is to go to his Nair wife and children, this provision will be another source of difficulty so far as non-Nairs are concerned in the matter of inheritance of the properties of a Hindu, be he a Marumakathayee or Makathayee. It is not merely the civil right that underlies succession to property, but there is also a religous element involved in the matter. In the case of a Makathayam Hindu, the son inherits his father's properties not because he is the son of his father, but because he performs the obsequies of his father. That is why we find that under the Marumakkathayam law sister's children inherit the properties of their uncle, because it is the sister's children that perform the obsequies. This aspect of the question has not had the least attention from the mover. These are the only remarks that I have to make regarding the Bill now before the Council."

Mr. Subba Aiyar:—

"At first, I did not want to make any observations on this Bill now. As I doubt that my silence is liable to be misconstrued, I will say a few words. So far as the Bill is concerned I may say that any legislation that is intended to improve the social condition of the Nairs has my hearty support, and I shall do my very best to see that the Bill emerges out of the Council in as satisfactory a form as possible. There are one or two matters in the Bill on which I may make a few observations. Government have not made up their mind one way or other on those matters. So far as the provisions relating to non-Nairs are concerned, there has not been enough time to know what the public opinion upon the points is. I do grant that if a man marries a Nair woman, he is bound to see that even after his death his Nair wife and children are well off and that sufficient provision is made for them, and I believe that every one will do it during his life-time. But it may be that a husband may before carrying out his intention die suddenly, and in such cases, the law may step in and help his wife and children, so that they may get a portion of the husband's estate. I fear, however, that there may be practical difficulties in the working of the Bill as drafted. My friend quoted the 20 T. L. R. case in support of his statement that the father is bound to maintain his children. Of course, so far as the maintenance of one's children is concerned, even before that ruling was passed, the obligation existed all the same. There has been an obligation thrown upon the father to maintain his children by the provisions of the Criminal Procedure Code. The necessity for a provision being conceded, the only difficulty is how to provide for the same by legislation, so that the interests of the Nair wife and children may be sufficiently safeguarded without at the same time wounding the feelings of other communities and without unduly infringing the rights of others. In the case of a person who marries a wife, the law of domicile of the husband always regulates the succession to his properties. The Bill would suggest that it is the law of the wife that should govern the succession to the husband's estate. It may be said that if we go to a court, the court may go into the question of domicile and that there is no objection to the legislature providing for it. Of course, the legislature can provide for it. As is humorously said about the British Parliament, the Legislature can do anything except make a man a woman. The only question is whether we will be justified in doing so. As I have said, there are some practical difficulties in the way, for example in regard to the questionof monogamy. According to the Bill, if a man has a caste wife, he shall not marry a Nair woman. Suppose a Brahmin has got a caste wife and he has got a few children by her and the wife is bedridden on account of paralysis or otherwise incapacitated and unfit to be his wife. He is an elderly man and would like to marry an elderly wife and suppose an elderly Nair lady has no objection to marry him. In such cases, why should such a marriage be penalised? My friend Mr. Vasudevan has pointed out the converse case and his community will be affected by the provision. Mr. Parameswaran Pillai does not want the provision as to monogamy in the statute itself. When there is no unanimity in the Nair community itself on the question, what if the rule as to monogamy were relaxed in exceptional cases at least? The question as to monogamy was considered, I believe, by the Nair Commission, and one of the reasons suggested for the rule is that the first wife can be divorced and a second wife married. I doubt the wisdom of such a provision even if the first wife were a Nair

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wife. To divorce her when she is bed-ridden will be a very cruel act. But the argument cannot apply in the case of a caste wife. You cannot divorce her even if you want to do so. The proposed legislation is intended to advance the social condition of the Nairs. If we enforce the rule, the husband in question should have recourse to immoral habits or under existing conditions marry a young girl of 10 or 12 and add to the number of young widows. Is this desirable? It is therefore a serious matter for the Council to consider whether the rule in question cannot be relaxed in exceptional cases.

Another point that suggests itself to me is the provision enabling the Nair wife to get a share of her husband's properties. This may again lead to some difficulties. I will give one instance. If a man having 4 or 5 children by a caste wife marries a Nair wife, and if she has no children, then under the Bill, the Nair wife will get one-half and all the children by the caste wife will get the other half. The children by the caste wife have to discharge his religous obligations. There is no obligation on such Nair wife, and she is also allowed to remarry. It may be said that the Bill regulates only self-acquisition. In the case of many, there will be only self-acquisition. While therefore we should see that the Nair wife and children are provided for, care should be taken to see that they do not have a higher status than the caste wife and her children or get more than what the latter would get. Some solution has to be arrived at and there is no doubt that if we put our heads together we shall be able to arrive at a solution which will be satisfactory to all concerned in the matter of dealing with the personal law of a community. We have to be very careful. I may give an instance. When the late Sir V. Bashyam Aiyangar wanted to effect a change by the introduction of the Gains of Learning Bill, the Bill was ultimately vetoed by Government as it would interfere with the Mitakshara law governing his community. Subject to these observations, I generally support the principle of the Bill."

Mr. Raman Tampi:—

"Sir,

I have listened to the observations made by my learned colleagues regarding the Bill and with reference to them I would speak a few words. Mr. G. Parameswaran Pillai and Dr. Kunjan Pillai have directed their criticisim mainly to the portions of the Bill dealing with the management of the tarwad and partition. Mr. K. Parameswaran Pillai has also spoken strongly about the provisions regarding tarwad management. I concede that the arrangements proposed would seriously inconvenience the karnavan. But it is always the case when restrictions are imposed on the powers of persons who are entrusted with the administration of properties which do not belong to them exclusively. The complaint is loudly voiced that the powers of the karanavan over tarwad movables are unrestricted and that much harm is caused to the tarwad. It looks anomalous that for alienating a piece of land worth not even ten rupees the written consent of all the adult members of a tarwad is needed while it does not require any one's consent to dispose of an elephant or a movable property that may be worth several thousands of rupees. In fact, when my original Bill was published, one of the serious criticisms was that the Bill was defective in as much as no provision was made therein to control the powers of the karanavan. Of course, if any karanavan finds it inconvenient for him to undertake the management of the tarwad he could surrender his karanavanship by a unilateral act. The explanation to Section 14 makes provision for the wife and children of a karanavan getting something out of the acquisitions made by him. In view of this provision it is highly necessary that the karanavan should be compelled to keep accounts. What is alleged is that false accounts would be cooked up. Courts can be trusted to distinguish between the true accounts from the false. However, if it is the case that any of the provisions in this respect is very harsh, opportunity will be taken in the later stages of the Bill to relax the provisions as regards partition. I do not think I should speak at length regarding the other arguments of my colleagues. The matter has been engaging the attention of the members of the community for a good length of time. The arguments for and against individual partition are so well known and have been repeated on either side that it is hardly necessary that I should go through the ground over again. In the opening speech I have made my position clear. Dr. Kunjan Pillai has conceded that there is a section of the community that is opposed to individual partition. I think it will be proper for us to try to bring in a law allowing individual partition, after overcoming the opposition; *i. e.*, by educating the public. In the meanwhile, on my side, I have tried my level best to meet the wishes of the progressive party. The scheme of partition proposed in the Bill was already described by me in introducing the Bill. I will just say a few words more. The scheme of partition set forth in the Report of the Marumakkathayam Committee was to allow partition only after the death of a common ancestress and her male children. The male children or some of them may be younger than their sisters and so it may not be easy for the sisters to avail themselves of the right of partition. In my Bill, I have set forth a

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scheme under which partition can take place amongst a group of members as soon as the common ancestress dies. The male children at once get their individual shares in partition. The females get their shares and their children's shares jointly. These smaller groups can again break up as soon as the ancestress (*i. e.*, the mother or grandmother as the case may be) dies. This shows that the males can get their individual shares quicker than the females who have children. The females without issue, like the males, can easily get their shares. This goes far ahead of the scheme of partition proposed by the Marumakkathayam Committee. That scheme is the thavazhee partition. It is a misnomer to call my scheme by that name. However, if it is possible to devise a scheme under which the demands of the progressive party could be further met, opportunity will be taken during the later stages of the Bill for this being done.

Now I will say a few words about the observations made by Messrs. Rajaraja Varma, Subba Aiyar, and Trivikraman Vasudevar. Their chief point is that the Bill affects the customs of other communities and so to that extent it is objectionable. Mr. Poti says that the Bill, if passed, will inconvenience his community in the matter of marriage. His contention is that, if this Bill were to become law, the Malayali Brahmin community would experience numerous difficulties and inconveniences in matters relating to marriage. In their community only the eldest male member can marry a caste wife. The younger male members generally take Nair women as their wives. When the person who married in his community dies, there arises the necessity for the next eldest male member to marry in the community. A person who has a Nair wife will, under the new law, be not at liberty to marry from his own community. This marriage is indispensable for the continuance of the family. Mr. Poti asks whether, under such circumstances, a grave difficulty does not arise. In his opinion the only remedy, as matters stand at present, is to contract *Sambandham* with Nair women. I admit that this state of things is of great convenience to Mr. Poti's community. But that is most disgraceful to the Nairs and is also an inconvenience to them. The Nairs allowed this system for a long time. They are not prepared to allow it any longer. My community will not, for a moment more, allow its women to be sacrificed for the convenience of Mr. Poti's community. It would be better for Mr. Poti's community to meet its requirements in some other way. It is not at all compatible with the self-respect and future well-being of my community to allow Nair women to be the wives of the males of Mr. Poti's community without the right of inheritance. And I definitely say that this will not be tolerated in future. On behalf of my community I most emphatically bring it to the notice of Government that, in this affair, they (the Government) ought to grant our request as soon as possible. As for Mr. Vasudevar's suggestion to enforce a marriage register, I have no faith in it. Since other classes of Hindus have been marrying without such a register, I cannot see the necessity for it in the case of Nairs. Now I pass on to reply to the observations of Messrs. Rajaraja Varma and Subba Aiyar. Their arguments also are to the same effect as Mr. Poti's; only they have said the same things in more dignified language. To them also my reply is the same as the one that I gave Mr. Poti. I well realise their difficulties, but all that I have to say is that it is very hard that they should think that the females of the Nair community should be chosen for overcoming their inconveniences and difficulties. My community feels it derogatory that its females should accept the position of wives without a chance of inheriting the properties of their husbands. It is wounding to their self-respect and we are resolved to see that the system is terminated as quickly as possible. The learned law member's special argument is that if the present system is changed there is the chance of an increase of child widows in his community. I well sympathise with his community in its difficulty. But I certainly think that the best way of avoiding this evil is not by making scapegoats of the Nair community. The Brahmins can, by adopting social reforms, introduce widow remarriages or, post-puberty marriages. The Nairs feel it an insult to be told that they should not change their law simply because the present state of affairs is advantageous to the Brahmins. We are determined to fight this matter out and we are sure that the Government will recognise the justice of our demands.

I am glad that the matter was discussed at such length and that in respect of the major portion of the Bill it meets with the approval of the Council. As the learned law member said, the details of the Bill will be considered later, and I hope that the Bill, when it emerges out of the Select Committee, will be made more acceptable and all possible alterations would be effected therein. With these observations I beg the Council to accept my motion."

President:—"I suppose I may take it that the sense of the house is that the general principles of the Bill are accepted subject to the reservations made by the members."

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The principle of the Bill having been affirmed, the mover proposed that the Bill be referred to a Select Committee consisting of Messrs. Subba Aiyar, Kunjan Pillai, G. Parameswaran Pillai, Kayalam Parameswaran Pillai, Rajaraja Varma, Kumaran Asan, K. Parameswaran Pillai, Trivikramar Vasudevar and the mover to report within four months.

Seconded by Mr. Subba Aiyar.

Carried.

THE LAND ASSIGNMENT BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Government Land Assignment Bill and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

Clause 6.

Mr. G. Parameswaran Pillai moved that the following be substituted for Clause 6 :—

"No Civil Court shall entertain any suit against Government in respect of any order passed under this Regulation, unless it shall be instituted within one year from the date on which the cause of action arises, but nothing in this Section shall apply to suits instituted on the ground that the land in respect of which the order complained of has been passed is not Government land".

He said:—"My amendment may be divided into two parts. First with regard to bar of civil suits, I am aware that the Clause under discussion enacts no new rule of law. The assignment of Government land being purely discretionary with Government, ordinarily, no one can claim a right of suit enforcing Government to use their discretion in a particular manner. Hitherto Government have been laying down rules regulating such assignment, but they were purely administrative rules. But under this Bill, these rules derive statutory force. Thereby certain rights accrue both to Government and the people. In the Statement of Objects and Reasons, Mr. Subba Aiyar has stated that rules framed under the Regulation will have the force of law and that this is to the interest of all parties concerned. Certainly so, and I took it as a concession by Government. I little thought that when Government were prepared to regulate by law the conduct and procedure of the Revenue officers in the assignment of Government land, they would at the same time deprive the people of their right of suit when the violation of such rules furnished a cause of action. Why should Government feel so nervous of the civil courts? Whose interest is served by the prohibition of civil suits? The Government observe that the object they have in view in promulgating this measure is the protection of the ignorant ryot from the wily exploiter and the unscrupulous capitalist, and the setting on their feet, for the ultimate benefit of the country, of the industrious poor and the unfortunate landless. They further believe that all opposition is due to an erroneous understanding of the subject. The object above set forth is most unexceptionable. But the question is how far the provisions in the Bill we have protested against tend to promote the above object. It cannot be that civil courts exist to retard justice and not to promote it; nor can it be that they are completely in the hands of the wily exploiter and that the ignorant ryot can expect no justice from such courts. I am sure my friend the law member would give a decisive answer in favour of the civil courts in this respect. If the civil suit is prohibited, then Government alone will be reaping the advantages that may legally accrue from the proposed change in the law. When the acts of the revenue officers are liable to be scrutinised by a court of law, many of the vagaries now associated with the assignment of puduval lands will cease to exist. The civil court is perhaps the only safe tribunal for the ignorant ryot. Several are the complaints received by me that during the re-survey operations in Nedumangad many an illiterate man found that plots that had been reclaimed and improved upon by him for a long time did no longer belong to him but to some rich intruder from abroad. The only remedy open to them under the law is to sue for the value of improvements effected by them because the question of assignment is purely discretionary with the Government and the civil courts have in many instances awarded them the relief [illegible]d for and have been obliged to remark that although the registry was unjust, the [illegible] not interefere with it. It is urged by the law member that the Tahsildars and [illegible]kars are as much qualified as Munsiffs and Judges and are recruited from the imp[illegible]ss of men and that they have the same sense of responsibility as officers of ot[illegible]tments. Without meaning

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